



ALTERNATE ADVISORY OPINION 07-03

Interpretation of § T.C.A. 3-6-304(j)
with respect to whether a lobbyist
may sign campaign contribution
checks to gubernatorial or legislative
candidates in her capacity as the
treasurer of a political action committee.

INTRODUCTION:

The following Advisory Opinion is written in response to a request from Ms. Marylee A. Booth of the Tennessee Oil Marketers Association ("TOMA") with regard to whether a lobbyist who is the treasurer of a political action committee ("PAC") may sign campaign contribution checks from the PAC to legislative officials and candidates.

In response to the above question, the Tennessee Ethics Commission ("Commission") concludes that the plain meaning of the statute creates a bright line test and that Ms. Booth, as a registered lobbyist, may not sign campaign contribution checks as the treasurer of a PAC.

BACKGROUND:

TOMA is a state-wide trade association which is registered as an employer of a lobbyist. TOMA is governed by a Board of Directors and Ms. Booth serves as TOMA's Executive Director and is registered as its in-house lobbyist. She also supervises the work of TOMA's contract lobbyists. Additionally, TOMA has a PAC, the Tennessee Oil Marketers Political Action Committee ("TOMPAC"), which is governed by a Board of Trustees that is separate from TOMA's Board of Director. Ms. Booth serves as TOMPAC's secretary and treasurer and in that capacity is responsible for signing checks distributing TOMPAC contributions to candidates.

Ms. Booth states that contributors to TOMPAC may request that their contribution be earmarked for the contributor's chosen candidate, but unless the contributor makes such a specific request the distribution of the contributions is determined by the Trustees. Ms. Booth states that she may provide advice and information on a candidate to the Trustees, but the final decision regarding the distribution of contributions rests with the Trustees.

DISCUSSION:

May a lobbyist, in her capacity as the treasurer of a political action committee, sign campaign contribution checks to gubernatorial or legislative candidates?

T.C.A § 3-6-304(i) states:

No employer of a lobbyist or multicandidate political campaign committee controlled by an employer of a lobbyist shall make any campaign contributions to a candidate for the office of governor or

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member of the general assembly during any regular annual session or any extraordinary session of the general assembly.

T.C.A. § 3-6-304(j) states:

No lobbyist shall offer or make any campaign contribution, including in-kind contribution, to or on behalf of the governor or any member of the general assembly or any candidate for the office of governor, state senator or state representative.

Accordingly, lobbyists are prohibited from making campaign contributions at any time of the year, but a PAC that is controlled by an employer of a lobbyist may make campaign contributions when the general assembly is not in session.

T.C.A § 3-6-304(j), above, contains no exceptions. The statute creates a bright line that no lobbyist is permitted to “offer or make any campaign contribution” on behalf of certain state officials. As long as one is a registered lobbyist, one cannot engage in certain activities. The statute does not permit an individual to be a lobbyist at certain times and not at others.¹

While it can be argued that Ms. Booth has no decision-making authority regarding TOMPAC contributions, and, thus, she is not a lobbyist “offer[ing] or mak[ing] a campaign contribution” when she signs the campaign contribution checks, such an interpretation neglects the plain meaning of T.C.A. § 3-6-304(j) and the bright line rule which the Legislature intended. Even if it can be said that Ms. Booth is performing a ministerial action² when she signs TOMPAC’s checks as its treasurer, she is still a lobbyist “offering” or “making” a campaign contribution which is prohibited under the statute and for which there is no “ministerial” exception. In addition, it does not seem unduly burdensome to either the PAC or Ms. Booth that someone else within the organization who is not a registered lobbyist “offer” or “make” the contribution by signing the campaign contribution checks. Having someone other than Ms. Booth sign the checks would appear to best further the plain meaning of the statute prohibiting lobbyists from offering or making campaign contributions and would not create a unintended loophole to the bright line of T.C.A. § 3-6-304(j)

Thomas J. Garland,

Chair

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¹ The legislative presumption that a “lobbyist is always a lobbyist” finds support in T.C.A. § 3-3-304(m) which provides that “No lobbyist shall serve as a member of any board, commission or governmental entity of state government having jurisdiction to regulate the business endeavors or professional activities of any employer of the lobbyist; nor shall any lobbyist serve as a member of the state election commission or any county election commission . . .” The presumption here is that the Legislature considered that it is the lobbyist’s status as such that prohibits the lobbyist from serving and that a lobbyist cannot “take off his or her lobbyist hat” under these circumstances.

² While T.C.A § 3-6-301(18) includes the definition of “ministerial action,” the phrase only appears within the definition of “administrative action” and “legislative action” in terms of when a lobbyist must register. The definition has no relevance to the instant advisory opinion request.

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